

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR INITIATING RULEMAKING**

**AGENDA ITEM # III.B.2.**

**ITEM SUMMARY**

The department requests that the Board approve its proposal to initiate rulemaking to amend the specific water quality standards for the classifications D-2, E-2, E-5 and F-1 to address the EPA disapproval of those standards as adopted by BER and to amend Department Circular WQB-7 Numeric Water Quality Standards to indicate which aquatic life standards are EPA priority pollutants and to amend the format of ARM 17.30.1006.

**LIST OF AFFECTED RULES**

ARM 17.30.502, 17.30.615, 17.30.619, 17.30.651, 17.30.653, 17.30.656, 17.30.657, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006, 17.30.1007 and Department Circular WQB-7.

**AFFECTED PARTIES SUMMARY**

The proposed new rules could affect persons that will be renewing or obtaining a new MPDES permit that discharges to a water body that has been re-classified to one of the four classifications being amended. However, no waterbodies have been reclassified to D-2, E-2, E-5 or F-1 so no persons should be affected.

Because of the EPA disapproval action of portions of the four classification standards, should the Board decide not to make the recommended changes, the EPA will be forced to promulgate the necessary changes.

The changes to WQB-7 will indicate which parameters with aquatic life criteria are EPA priority pollutants. No numeric changes are proposed.

The proposed amendments to ARM 17.30.1006 will make the rule format consistent with the Secretary of State's office standards, and will update the reference to Department Circular WQB-7.

**SCOPE OF PROPOSED PROCEEDING**

The Department requests that the Board initiate rulemaking to amend ARM 17.30.502, 17.30.615, 17.30.619, 17.30.651, 17.30.653, 17.30.656, 17.30.657, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006, 17.30.1007 and Department Circular WQB-7, schedule a public hearing and assign a hearing officer to preside over the hearing.

**BACKGROUND**

The underlying surface water classification system (ARM 17.30.607-614) assigns beneficial uses on a watershed basis with some specific exceptions. In general, individual streams are not identified or assigned specific uses and all waterbodies are presumed to be of a sufficient quality to meet their classification and associated standards. The system works well for perennial streams. However, ephemeral streams, ditches and seasonal and semi-permanent lakes should not be presumed to meet all designated uses of the watershed classifications. By their very nature these waterbodies usually can support a limited number of uses and then only when they have water. The existing water

quality standards may be too stringent for some streams, lakes or ponds.

The department brought to the Board a proposal in early 2002 to amend the surface water classification system to include:

- Two ephemeral stream classes (E-1 and E-2);
- Two ditch classes (D-1 and D-2);
- Three seasonal or semi-permanent lake and pond classes (E-3, E-4 and E-5); and
- One low or sporadic flow class (F-1).

The department, under the direction of the Board, proceeded with rulemaking. The Board adopted the new classifications and standards incorporating the pertinent comments received. The new rules became effective August 2003.

The US EPA has a mandatory duty to review and approve all water quality standards adopted by a state. During that review the EPA (at the national and regional levels) objected to the “level of protection” provided for aquatic life in classes D-2, E-2, E-5 and F-1. The specific standards for those classes were disapproved. All of the classifications and the specific standards for D-1, E-1, E-3 and E-4 were approved (as were the nutrient and algal biomass standards for the Clark Fork River).

Normally the EPA is required to promulgate approvable standards following a disapproval action. However, the Region 8 EPA and the department have been working together to find a solution since the department made its review submission in November 2002. The proposed amendments are the result of those discussions.

#### **HEARING INFORMATION**

The Department requests that the Board appoint a hearing officer to conduct a public hearing on January 16, 2004, with the close of public comment on January 23, 2004.

#### **BOARD OPTIONS**

The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice of Public Hearing on Proposed Amendment and initiate rulemaking thereafter; or
3. Deny the Department's request that it initiate rulemaking.

#### **DEQ RECOMMENDATION**

The Department recommends that the Board grant the Department's request to initiate rulemaking and schedule a hearing.

#### **ENCLOSURES**

The following information is attached to this summary:

- 1) Draft Notice of Public Hearing on Proposed Amendment;
- 2) Draft of proposed changes to WQB-7.